

REFERENCE TITLE: **sentencing; prohibited possessors**

State of Arizona
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HB 2552

Introduced by
Representatives Tovar, Sinema, Young Wright: Campbell CH, Lujan, Meza,
Schapira

AN ACT

**AMENDING SECTIONS 13-701, 13-709.01 AND 13-1204, ARIZONA REVISED STATUTES;
RELATING TO PROHIBITED POSSESSORS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-701, Arizona Revised Statutes, is amended to
3 read:

4 13-701. Sentence of imprisonment for felony: presentence
5 report: aggravating and mitigating factors:
6 consecutive terms of imprisonment: definition

7 A. A sentence of imprisonment for a felony shall be a definite term of
8 years and the person sentenced, unless otherwise provided by law, shall be
9 committed to the custody of the state department of corrections.

10 B. No prisoner may be transferred to the custody of the state
11 department of corrections without a certified copy of the judgment and
12 sentence, signed by the sentencing judge, and a copy of a recent presentence
13 investigation report unless the court has waived preparation of the report.

14 C. The minimum or maximum term imposed pursuant to section 13-702,
15 13-703, 13-704, 13-705, 13-708, 13-710, 13-1406, 13-3212 or 13-3419 may be
16 imposed only if one or more of the circumstances alleged to be in aggravation
17 of the crime are found to be true by the trier of fact beyond a reasonable
18 doubt or are admitted by the defendant, except that an alleged aggravating
19 circumstance under subsection D, paragraph 11 of this section shall be found
20 to be true by the court, or in mitigation of the crime are found to be true
21 by the court, on any evidence or information introduced or submitted to the
22 court or the trier of fact before sentencing or any evidence presented at
23 trial, and factual findings and reasons in support of such findings are set
24 forth on the record at the time of sentencing.

25 D. For the purpose of determining the sentence pursuant to subsection
26 C of this section, the trier of fact shall determine and the court shall
27 consider the following aggravating circumstances, except that the court shall
28 determine an aggravating circumstance under paragraph 11 of this subsection:

29 1. Infliction or threatened infliction of serious physical injury,
30 except if this circumstance is an essential element of the offense of
31 conviction or has been utilized to enhance the range of punishment under
32 section 13-704.

33 2. Use, threatened use or possession of a deadly weapon or dangerous
34 instrument during the commission of the crime, except if this circumstance is
35 an essential element of the offense of conviction or has been utilized to
36 enhance the range of punishment under section 13-704.

37 3. If the offense involves the taking of or damage to property, the
38 value of the property taken or damaged.

39 4. Presence of an accomplice.

40 5. Especially heinous, cruel or depraved manner in which the offense
41 was committed.

42 6. The defendant committed the offense as consideration for the
43 receipt, or in the expectation of the receipt, of anything of pecuniary
44 value.

1 7. The defendant procured the commission of the offense by payment, or
2 promise of payment, of anything of pecuniary value.

3 8. At the time of the commission of the offense, the defendant was a
4 public servant and the offense involved conduct directly related to the
5 defendant's office or employment.

6 9. The victim or, if the victim has died as a result of the conduct of
7 the defendant, the victim's immediate family suffered physical, emotional or
8 financial harm.

9 10. During the course of the commission of the offense, the death of an
10 unborn child at any stage of its development occurred.

11 11. The defendant was previously convicted of a felony within the ten
12 years immediately preceding the date of the offense. A conviction outside
13 the jurisdiction of this state for an offense that if committed in this state
14 would be punishable as a felony is a felony conviction for the purposes of
15 this paragraph.

16 12. The defendant was wearing body armor as defined in section 13-3116.

17 13. The victim of the offense is at least sixty-five years of age or is
18 a disabled person as defined in section 38-492, subsection B.

19 14. The defendant was appointed pursuant to title 14 as a fiduciary and
20 the offense involved conduct directly related to the defendant's duties to
21 the victim as fiduciary.

22 15. Evidence that the defendant committed the crime out of malice
23 toward a victim because of the victim's identity in a group listed in section
24 41-1750, subsection A, paragraph 3 or because of the defendant's perception
25 of the victim's identity in a group listed in section 41-1750, subsection A,
26 paragraph 3.

27 16. The defendant was convicted of a violation of section 13-1102,
28 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
29 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
30 committed while driving a motor vehicle and the defendant's alcohol
31 concentration at the time of committing the offense was 0.15 or more. For
32 the purposes of this paragraph, "alcohol concentration" has the same meaning
33 prescribed in section 28-101.

34 17. Lying in wait for the victim or ambushing the victim during the
35 commission of any felony.

36 18. The offense was committed in the presence of a child and any of the
37 circumstances exists that are set forth in section 13-3601, subsection A.

38 19. The offense was committed in retaliation for a victim either
39 reporting criminal activity or being involved in an organization, other than
40 a law enforcement agency, that is established for the purpose of reporting or
41 preventing criminal activity.

42 20. The defendant was impersonating a peace officer as defined in
43 section 1-215.

44 21. The defendant was in violation of 8 United States Code section
45 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

1 22. The defendant used a remote stun gun or an authorized remote stun
2 gun in the commission of the offense. For the purposes of this paragraph:

3 (a) "Authorized remote stun gun" means a remote stun gun that has all
4 of the following:

5 (i) An electrical discharge that is less than one hundred thousand
6 volts and less than nine joules of energy per pulse.

7 (ii) A serial or identification number on all projectiles that are
8 discharged from the remote stun gun.

9 (iii) An identification and tracking system that, on deployment of
10 remote electrodes, disperses coded material that is traceable to the
11 purchaser through records that are kept by the manufacturer on all remote
12 stun guns and all individual cartridges sold.

13 (iv) A training program that is offered by the manufacturer.

14 (b) "Remote stun gun" means an electronic device that emits an
15 electrical charge and that is designed and primarily employed to incapacitate
16 a person or animal either through contact with electrodes on the device
17 itself or remotely through wired probes that are attached to the device or
18 through a spark, plasma, ionization or other conductive means emitting from
19 the device.

20 23. During or immediately following the commission of the offense, the
21 defendant committed a violation of section 28-661, 28-662 or 28-663.

22 24. ~~USE, THREATENED USE OR POSSESSION OF A DEADLY WEAPON DURING THE~~
23 ~~COMMISSION OF THE OFFENSE IF AT THE TIME OF THE COMMISSION OF THE OFFENSE THE~~
24 ~~DEFENDANT WAS A PROHIBITED POSSESSOR AS DEFINED IN SECTION 13-3101.~~

25 ~~24-~~ 25. Any other factor that the state alleges is relevant to the
26 defendant's character or background or to the nature or circumstances of the
27 crime.

28 E. For the purpose of determining the sentence pursuant to subsection
29 C of this section, the court shall consider the following mitigating
30 circumstances:

31 1. The age of the defendant.

32 2. The defendant's capacity to appreciate the wrongfulness of the
33 defendant's conduct or to conform the defendant's conduct to the requirements
34 of law was significantly impaired, but not so impaired as to constitute a
35 defense to prosecution.

36 3. The defendant was under unusual or substantial duress, although not
37 to a degree that would constitute a defense to prosecution.

38 4. The degree of the defendant's participation in the crime was minor,
39 although not so minor as to constitute a defense to prosecution.

40 5. During or immediately following the commission of the offense, the
41 defendant complied with all duties imposed under sections 28-661, 28-662 and
42 28-663.

43 6. Any other factor that is relevant to the defendant's character or
44 background or to the nature or circumstances of the crime and that the court
45 finds to be mitigating.

1 F. If the trier of fact finds at least one aggravating circumstance,
2 the trial court may find by a preponderance of the evidence additional
3 aggravating circumstances. In determining what sentence to impose, the court
4 shall take into account the amount of aggravating circumstances and whether
5 the amount of mitigating circumstances is sufficiently substantial to justify
6 the lesser term. If the trier of fact finds aggravating circumstances and
7 the court does not find any mitigating circumstances, the court shall impose
8 an aggravated sentence.

9 G. The court in imposing a sentence shall consider the evidence and
10 opinions presented by the victim or the victim's immediate family at any
11 aggravation or mitigation proceeding or in the presentence report.

12 H. This section does not affect any provision of law that imposes the
13 death penalty, that expressly provides for imprisonment for life or that
14 authorizes or restricts the granting of probation and suspending the
15 execution of sentence.

16 I. The intentional failure by the court to impose the mandatory
17 sentences or probation conditions provided in this title is malfeasance.

18 J. For the purposes of this section, "trier of fact" means a jury,
19 unless the defendant and the state waive a jury in which case the trier of
20 fact means the court.

21 Sec. 2. Section 13-709.01, Arizona Revised Statutes, is amended to
22 read:

23 13-709.01. Special sentencing provisions; assault

24 A. A person who is convicted of intentionally or knowingly committing
25 aggravated assault on a peace officer while the officer is engaged in the
26 execution of any official duties pursuant to section 13-1204, subsection A,
27 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the
28 presumptive sentence authorized under this chapter and is not eligible for
29 suspension of sentence, commutation or release on any basis until the
30 sentence imposed is served. IF THE PERSON WAS A PROHIBITED POSSESSOR AS
31 DEFINED IN SECTION 13-3101 AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE
32 SENTENCE IMPOSED PURSUANT TO THIS SUBSECTION SHALL BE CONSECUTIVE TO ANY
33 OTHER SENTENCE PRESENTLY BEING SERVED BY THE CONVICTED PERSON.

34 B. A person who is convicted of a violation of section 13-1207 shall
35 not be eligible for suspension of sentence, probation, pardon or release from
36 confinement on any basis until the sentence imposed by the court has been
37 served or commuted. A sentence imposed pursuant to section 13-1207 shall be
38 consecutive to any other sentence presently being served by the convicted
39 person.

40 C. The sentence imposed for a violation of section 13-1212 shall run
41 consecutively to any sentence of imprisonment for which the prisoner was
42 confined or to any term of community supervision, probation, parole, work
43 furlough or other release from confinement.

1 Sec. 3. Section 13-1204, Arizona Revised Statutes, is amended to read:
2 13-1204. Aggravated assault; classification; definition

3 A. A person commits aggravated assault if the person commits assault
4 as prescribed by section 13-1203 under any of the following circumstances:

5 1. If the person causes serious physical injury to another.

6 2. If the person uses a deadly weapon or dangerous instrument.

7 3. If the person commits the assault by any means of force that causes
8 temporary but substantial disfigurement, temporary but substantial loss or
9 impairment of any body organ or part or a fracture of any body part.

10 4. If the person commits the assault while the victim is bound or
11 otherwise physically restrained or while the victim's capacity to resist is
12 substantially impaired.

13 5. If the person commits the assault after entering the private home
14 of another with the intent to commit the assault.

15 6. If the person is eighteen years of age or older and commits the
16 assault on a child who is fifteen years of age or under.

17 7. If the person commits assault as prescribed by section 13-1203,
18 subsection A, paragraph 1 or 3 and the person is in violation of an order of
19 protection issued against the person pursuant to section 13-3602 or 13-3624.

20 8. If the person commits the assault knowing or having reason to know
21 that the victim is any of the following:

22 (a) A peace officer, or a person summoned and directed by the officer
23 while engaged in the execution of any official duties.

24 (b) A constable, or a person summoned and directed by the constable
25 while engaged in the execution of any official duties.

26 (c) A firefighter, fire investigator, fire inspector, emergency
27 medical technician or paramedic engaged in the execution of any official
28 duties, or a person summoned and directed by such individual while engaged in
29 the execution of any official duties.

30 (d) A teacher or other person employed by any school and the teacher
31 or other employee is on the grounds of a school or grounds adjacent to the
32 school or is in any part of a building or vehicle used for school purposes,
33 any teacher or school nurse visiting a private home in the course of the
34 teacher's or nurse's professional duties or any teacher engaged in any
35 authorized and organized classroom activity held on other than school
36 grounds.

37 (e) A health care practitioner who is certified or licensed pursuant to
38 title 32, chapter 13, 15, 17 or 25, or a person summoned and directed by the
39 licensed health care practitioner while engaged in the person's professional
40 duties. This subdivision does not apply if the person who commits the
41 assault is seriously mentally ill, as defined in section 36-550, or is
42 afflicted with alzheimer's disease or related dementia.

43 (f) A prosecutor.

1 9. If the person knowingly takes or attempts to exercise control over
2 any of the following:

3 (a) A peace officer's or other officer's firearm and the person knows
4 or has reason to know that the victim is a peace officer or other officer
5 employed by one of the agencies listed in paragraph 10, subdivision (a), item
6 (i), (ii), (iii), (iv) or (v) of this subsection and is engaged in the
7 execution of any official duties.

8 (b) Any weapon other than a firearm that is being used by a peace
9 officer or other officer or that the officer is attempting to use, and the
10 person knows or has reason to know that the victim is a peace officer or
11 other officer employed by one of the agencies listed in paragraph 10,
12 subdivision (a), item (i), (ii), (iii), (iv) or (v) of this subsection and is
13 engaged in the execution of any official duties.

14 (c) Any implement that is being used by a peace officer or other
15 officer or that the officer is attempting to use, and the person knows or has
16 reason to know that the victim is a peace officer or other officer employed
17 by one of the agencies listed in paragraph 10, subdivision (a), item (i),
18 (ii), (iii), (iv) or (v) of this subsection and is engaged in the execution
19 of any official duties. For the purposes of this subdivision, "implement"
20 means an object that is designed for or that is capable of restraining or
21 injuring an individual. Implement does not include handcuffs.

22 10. If the person meets both of the following conditions:

23 (a) Is imprisoned or otherwise subject to the custody of any of the
24 following:

25 (i) The state department of corrections.

26 (ii) The department of juvenile corrections.

27 (iii) A law enforcement agency.

28 (iv) A county or city jail or an adult or juvenile detention facility
29 of a city or county.

30 (v) Any other entity that is contracting with the state department of
31 corrections, the department of juvenile corrections, a law enforcement
32 agency, another state, any private correctional facility, a county, a city or
33 the federal bureau of prisons or other federal agency that has responsibility
34 for sentenced or unsentenced prisoners.

35 (b) Commits an assault knowing or having reason to know that the
36 victim is acting in an official capacity as an employee of any of the
37 entities listed in subdivision (a) of this paragraph.

38 B. Except pursuant to subsections C, ~~and~~ D AND E of this section,
39 aggravated assault pursuant to subsection A, paragraph 1 or 2 or paragraph 9,
40 subdivision (a) of this section is a class 3 felony ~~except if the victim is~~
41 ~~under fifteen years of age in which case it is a class 2 felony punishable~~
42 ~~pursuant to section 13-705.~~ Aggravated assault pursuant to subsection A,
43 paragraph 3 of this section is a class 4 felony. Aggravated assault pursuant
44 to subsection A, paragraph 9, subdivision (b) or paragraph 10 of this section
45 is a class 5 felony. Aggravated assault pursuant to subsection A, paragraph

1 4, 5, 6, 7 or 8 or paragraph 9, subdivision (c) of this section is a class 6
2 felony.

3 C. Aggravated assault pursuant to subsection A, paragraph 1 or 2 of
4 this section committed on a peace officer while the officer is engaged in the
5 execution of any official duties is a class 2 felony. Aggravated assault
6 pursuant to subsection A, paragraph 3 of this section committed on a peace
7 officer while the officer is engaged in the execution of any official duties
8 is a class 3 felony. Aggravated assault pursuant to subsection A, paragraph
9 8, subdivision (a) of this section resulting in any physical injury to a
10 peace officer while the officer is engaged in the execution of any official
11 duties is a class 5 felony.

12 D. Aggravated assault pursuant to:

13 1. Subsection A, paragraph 1 or 2 of this section is a class 2 felony
14 if committed on a prosecutor.

15 2. Subsection A, paragraph 3 of this section is a class 3 felony if
16 committed on a prosecutor.

17 3. Subsection A, paragraph 8, subdivision (f) of this section is a
18 class 5 felony if the assault results in physical injury to a prosecutor.

19 E. AGGRAVATED ASSAULT PURSUANT TO:

20 1. SUBSECTION A, PARAGRAPH 2 OF THIS SECTION IS A CLASS 2 FELONY IF AT
21 THE TIME OF THE COMMISSION OF THE OFFENSE THE PERSON WAS A PROHIBITED
22 POSSESSOR AS DEFINED IN SECTION 13-3101.

23 2. SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION IS A CLASS 2 FELONY
24 AND IS PUNISHABLE PURSUANT TO SECTION 13-705 IF THE VICTIM IS UNDER FIFTEEN
25 YEARS OF AGE.

26 ~~E.~~ F. For the purposes of this section, "prosecutor" means a county
27 attorney, a municipal prosecutor or the attorney general and includes an
28 assistant or deputy county attorney, municipal prosecutor or attorney
29 general.